

Accountability Report Card Summary 2018
South Dakota

South Dakota has the worst state whistleblower laws in the country:

- Scoring 23 out of a possible 100;
- Ranking 51st out of 51 (50 states and the District of Columbia).

South Dakota has meager coverage (7 of 33 possible points) with a very low degree of usability (8 out of 33) and weak remedies (8 out of 33).

South Dakota's full Whistleblower Report Card
Narrative summary of South Dakota law

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South Dakota Accountability Index Report card
 Coverage, Usability & Strength — Rating on a 100 Point Scale
 S.D. Codified Laws § 3-6C-19
 S.D. Codified Laws § 3-6D-22 (2012)
 S.D. Codified Laws § 3-6D-5

A Breadth of Coverage (33 points possible from 10 factors).

Does the statute cover disclosures of –

Factor	Maximum Points	Awarded Points
1. Violation of state or federal law, rules or regulations	6 points	6 points ¹
2. Gross mismanagement	3 points	0 points
3. Abuse of authority (including violations of agency policy)	3 points	0 points
4. Waste of public funds or resources	3 points	0 points
5. Danger to health and/or public safety and/or environment	5 points	0 points
6. Communication of scientific opinion or alteration of technical findings	5 points	0 points
7. Breaches of professional ethical canons	5 points	0 points

Does the statute provide –

8. Employee may refuse to carry out illegal or improper orders	1 point	0 points
9. Prohibition on “gag orders” to prevent employee disclosures	1 point	1 points ²
10. Whistleblower protection does not preclude collective bargaining or other rights	1 point	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>7 points</u>

B. Usability: Scope of Protection (33 points possible from 10 factors)

Do the laws protect disclosures made to –

Factor	Maximum Points	Awarded Points
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¹ South Dakota does not have a complete whistleblower law. “An employee may file a grievance with the Civil Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee's department or to the attorney general's office or because the employee has filed a suggestion pursuant to this section.” § 3-6D-22 (2012).

² S.D. Codified Laws § 3-6C-19 (freedom of speech) and S.D. Codified Laws § 3-6D-5(4).

1. Any person or organization, including public media	24 points	0 points
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Or does the statute protect disclosures made to –

2. Any state executive or legislative body or person employed by such entities	4 points	0 points
3. Testimony in any official proceeding	4 points	0 points
4. Any state or federal law enforcement or investigative body or entity or its employees	3 points	2 points ³
5. Any federal or non-state governmental entity	3 points	0 points
6. Co-workers or supervisors within the scope of duty	3 points	3 points ⁴
7. Anyone as provided in paragraphs 2 thru 6 (above) without prior disclosure to another state official or supervisor	3 points	3 points

Does the state law –

8. Require an investigation by state auditor or other investigative entity of whistleblower disclosures	1 point	0 points
9. Have a statute of limitations of one year or longer for filing complaints	3 points (2 points if 6 months or longer and 1 point if 60 days or longer)	0 points ⁵
10. Allow qui tam or false claim actions for recovery of “bounty” in cases of fraud against the state	5 points (2 points if a qui tam statute of limited scope)	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>8 points</u>

C. Strength: Remedies against retaliation (33 points possible from 11 factors)

Does the statute provide for –

³ South Dakota Attorney General’s office and State Government Accountability Board

⁴ Employee reports a violation of state law through the chain of command of the employee’s department. See S.D. Codified Laws § 3-6D-22 (2012)

⁵ The South Dakota statute does not contain a statute of limitations for the filing of grievances for retaliation. We were unable to find any other provision in South Dakota law or regulation that established the time period in which a grievance must be filed.

Factor	Maximum Points	Awarded Points
1. Prohibition on retaliatory actions affecting a state employee's terms and conditions of employment	4 points	4 points ⁶
2. Opportunity for administrative challenge	4 points	4 points ⁷
3. Opportunities for court challenge	4 points	0 points
4. Trial by jury	3 points	0 points
5. Burden shifting upon prima facie showing.	1 point	0 points
6.. Make whole remedies (court costs, attorney fees, back pay; restoration of benefits, etc.)	3 points	0 points
7. Actual and/or compensatory damages	3 points	0 points
8. Interim relief, injunction or stay of personnel actions	3 points	0 points
9. Transfer preference for prevailing whistleblower or ban on blackballing	2 points	0 points
10. Punitive damages or other fines and penalties	3 points	0 points
11. Personnel actions against managers found to have retaliated	3 points	0 points
	<u>Maximum Score</u> <u>33 points</u>	<u>Awarded Score</u> <u>8 points</u>

Bonus Point (1 point): Posting or employee notice of whistleblower rights required.

Factor	Maximum Score	Awarded Score
Posting	1 point	0 points

Totals **100 points** **23 points**

⁶ S.D. Codified Laws § 3-6D-22.

⁷ An employee may file a grievance with the Civil Service Commission if the employee believes that there has been retaliation.

State Legislation Protecting State Employee Whistleblowers (June 2018)

State- South Dakota

Statute- Public Officers and Employees- State Employment General Provisions - S.D. Codified Laws S.D. Codified Laws § 3-6C-19 (freedom of speech); Civil State Service - S.D. Codified Laws § 3-6D-22 (retaliation); S.D. Codified Laws § 3-6D-5 (general protections for civil servants).

Provisions-

South Dakota does not have a complete whistleblower law. However, under Title Three: Public Officers and Employees, an employee may file a grievance with the Civil Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee's department or to the attorney general's office, the State Government Accountability Board, or because the employee has filed a suggestion pursuant to this section

The statutes concerning the freedom of speech of State employees statute declare that 1) it is South Dakota's policy that citizens of the state shall not be deprived of their freedom of speech guaranteed to them by the Constitution by reason of the fact that they are state officers and employees and 2) no agency may pass a rule restricting or prohibiting the constitutionally guaranteed right of its employees and officers to express their opinions.